IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7286 OF 2005
IN
CRIMINAL APPEAL NO.890 OF 2005

Dattatray Harishchandra Golipkar. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Smt.Gauri Godse for applicant.

Mr.M.H.Mhatre, APP for State.

CORAM: A.M.KHANWILKAR,J

DATE : DECEMBER 12, 2005.

P.C. :

1. Heard counsel for the parties.

2. By this application, applicant seeks suspension of the order of conviction which is operating against the applicant passed by the lower court for offence punishable under section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988. In support of the submission, counsel for the applicant has pressed into service decision of our High Court in the case of **Pralhad Sitaram Yeole Vs. State of Maharashtra reported in 2002(3) Mh.L.J.Page 377.** Reliance was placed essentially on the observation made in paragraph 9 and 11 of this

decision. Indeed, even in that case the conviction was in relation to the said provision for which the applicant herein has been convicted. In the present case also applicant contends that it is a case of no evidence as was the prima facie opinion recorded in the aforesaid reported decision. It is argued by the counsel for the applicant that the relief as was granted in the above said reported case be extended even in the case of applicant who has now been threatened with action of removal from service on account of order of conviction operating against him by his employer.

3. The argument seems to be attractive. However, the same will have to be rejected relying on the two recent decisions of the Apex Court, which would be binding on this court in the case of **K.C.Sareen V/s. CBI. Chandigarh reported** in **(2001)6 Supreme Court Cases 584**. It is apposite to advert to exposition in paragraph 12 and 13 of this decision. The same read thus :

> "12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institution created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public

offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institution besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fallout would be one of shaking the system itself. Hence it is necessary that the court should not aid the public servant who stands convicted for corruption charges to hold only (sic) public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a court order suspending the conviction.

> 13. The above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate court or the revisional court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision."

4. The next decision of the Apex Court which follows the decision in the case of K.C.Sareen is in the case of **State of Maharashtra V/s. Gajanan and anr.,** reported **in AIR 2004 S.C.1188.** This decision refers to dictum of the Apex Court in K.C.Sareen in paragraph-11, which reads thus :

> "11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally

> suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter.

5. After adverting to the said observations in its earlier decision, the Apex Court has noted that High Court failed to consider all aspects including ramification of keeping such conviction in relation to the offence under provisions of Corruption Act in abeyance. The Apex court then proceeded to set aside the order of stay of conviction passed by the High Court. In the circumstances, to my mind, this application should fail and the same will have to be rejected. Ordered accordingly.

6. As the application for suspending order of conviction is rejected, the applicant may be justified in requesting this court to hear the main criminal Appeal pending before this court, which has been admitted by order dated 5th October, 2005. The said appeal, if ready in all respects be placed for hearing in the week commencing from 27th February, 2006, provided appellant provides private paper book.